

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
LUBBOCK DIVISION**

**REBEKAH JENNINGS; BRENNAN
HARMON; ANDREW PAYNE;
NATIONAL RIFLE ASSOCIATION OF
AMERICA, INC.,**

Plaintiffs,

v.

**STEVEN MCCRAW, in his official
capacity as Director of the Texas
Department of Public Safety,**

Defendant.

**Case No. 5:10-cv-00141-C
Judge Sam R. Cummings**

PLAINTIFFS' CONSENT MOTION FOR A CONTINUANCE

COME NOW the Plaintiffs, Rebekah Jennings, Brennan Harmon, Andrew Payne, and the National Rifle Association of America, Inc. (NRA), and pursuant to Local Rule 40.1 move the Court for a continuance of the scheduled date of trial in this matter to October 17, 2011. In support of this motion, Plaintiffs state as follows:

BACKGROUND

1. On January 4, 2011, the Court issued a pretrial notice and order scheduling this matter for trial on August 15, 2011. *See* Doc. No. 40. That Order also establishes a deadline of 21 days before the scheduled trial date (currently July 25, 2011) for the parties to complete various tasks, including exchanging exhibits and preparing and filing a proposed pretrial order, proposed findings of fact and conclusions of law, and trial briefs. *Id.*

2. When the Court issued its scheduling order on January 4, the discovery deadline was set for May 16, 2011. *See* Doc. No. 36.

3. On March 28, 2011, Plaintiffs filed a motion to file a second amended complaint, withdraw original plaintiff James D'Cruz from the case, and add Rebekah Jennings, Brennan Harmon, and Andrew Payne as plaintiffs. *See* Doc. No. 44 (Motion to Amend).

4. On May 16, 2011, Plaintiffs and Defendant each filed a motion for summary judgment. *See* Doc. Nos. 52, 56. The parties completed briefing the motions with the filing of their responses on June 6. *See* Doc. Nos. 62, 63. The parties' summary judgment motions remain pending, as does Plaintiffs' request for oral argument on their motion.

5. The Court granted Plaintiffs' Motion to Amend on July 6, 2011, and on July 11 Plaintiffs filed their second amended complaint. *See* Doc. Nos. 65, 66. In granting the motion, the Court recognized "that the main issues of this case appear to be matters of law and not matters of fact." Doc. No. 65 at 3. The Court also extended the discovery deadline by 20 days from the date of its order, *id.* at 4, *i.e.*, to July 26.

ARGUMENT

6. Trial on this matter is set to begin on August 15, 2011. We respectfully submit that this date should be continued to October 17, 2011 (a continuance of 63 days). As an initial matter, under the current schedule, the parties' pretrial obligations to, among other things, prepare proposed findings of fact, exchange trial exhibits, and file a proposed pretrial order must be completed by July 25, yet discovery is not set to close until July 26. A continuance will give the parties time following the close of discovery to complete these pretrial obligations. Twenty-one days prior to October 17 is September 26, which means that under Plaintiffs' proposed trial date the parties will have two months after the close of discovery to do so. This Court's order

setting trial for August 15 contemplated giving the parties even more time, from May 16 (when discovery was then set to close) to July 25 (twenty-one days prior to August 15).

7. Furthermore, Plaintiffs and Defendant have each filed a motion for summary judgment requesting that this case be decided as a matter of law, and the Court has recognized that the “main issues of this case appear to be matters of law and not matters of fact.” Doc. No. 65 at 3. The Court’s decision on the pending motions for summary judgment thus could obviate the need for a trial, and continuing the trial date will give the Court additional time before trial to consider those motions.

8. This motion is not filed for purposes of delay, but so that justice may prevail. Plaintiffs’ counsel has conferred with Defendant’s counsel, and Defendant consents to continuance of the trial date to October 17, 2011.

CONCLUSION

9. For these reasons, Plaintiffs request that the Court grant their motion to continue trial in this matter to October 17, 2011.

Dated: July 14, 2011

Respectfully submitted,

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Local Counsel for Plaintiffs

Counsel for Plaintiffs

AGREED:

DATED:

s/ Rebekah Jennings
Rebekah Jennings, Plaintiff and Movant

July 13, 2011

s/ Brennan Harmon
Brennan Harmon, Plaintiff and Movant

July 13, 2011

s/ Andrew Payne
Andrew Payne, Plaintiff and Movant

July 12, 2011

s/ Robert Marcario
Robert Marcario, on behalf of Plaintiff and Movant NRA

July 13, 2011

AGREED:

DATED:



Rebekah Jennings, Plaintiff and Movant

7/13/11

Brennan Harmon, Plaintiff and Movant

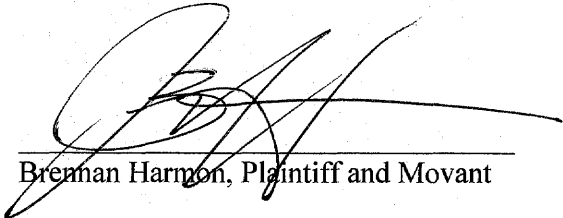
Andrew Payne, Plaintiff and Movant

Robert Marcario, on behalf of Plaintiff and Movant NRA

AGREED:

DATED:

Rebekah Jennings, Plaintiff and Movant



Brennan Harmon, Plaintiff and Movant

July 13, 2011

Andrew Payne, Plaintiff and Movant

Robert Marcario, on behalf of Plaintiff and Movant NRA

AGREED:

DATED:

Rebekah Jennings, Plaintiff and Movant

Brennan Harmon, Plaintiff and Movant

Andrew Payne

Andrew Payne, Plaintiff and Movant

July 12, 2011

Robert Marcario, on behalf of Plaintiff and Movant NRA

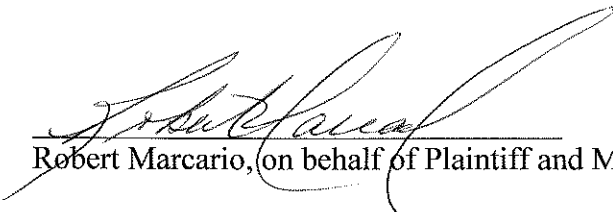
AGREED:

DATED:

Rebekah Jennings, Plaintiff and Movant

Brennan Harmon, Plaintiff and Movant

Andrew Payne, Plaintiff and Movant



Robert Marcario, on behalf of Plaintiff and Movant NRA

7/13/11

CERTIFICATE OF CONFERENCE

On July 7, 2011 Plaintiffs' counsel conferred with Defendant's counsel regarding this motion. Defendant's counsel stated that Defendant consents to continuance of the trial date to October 17, 2011.

s/ Charles J. Cooper
Charles J. Cooper

CERTIFICATE OF SERVICE

On July 14, 2011, I electronically submitted the foregoing document with the clerk of court for the U.S. District Court, Northern District of Texas, using the electronic case filing system of the court. I hereby certify that I have served all counsel and/or *pro se* parties of record electronically or by another manner authorized by Federal Rule of Civil Procedure 5 (b)(2).

s/ Charles J. Cooper
Charles J. Cooper